

UNITED STATES BANKRUPTCY COURT  
EASTERN DISTRICT OF MISSOURI  
SOUTHEASTERN DIVISION

<p><b>In re:</b></p> <p><b>BRIGGS &amp; STRATTON CORPORATION, et al.,</b></p> <p><b>Debtors.<sup>1</sup></b></p>	<p>§ <b>Chapter 11</b></p> <p>§</p> <p>§ <b>Case No. 20-43597-399</b></p> <p>§</p> <p>§ <b>(Jointly Administered)</b></p> <p>§</p> <p>§ <b>Hearing Date &amp; Time:</b></p> <p>§ January 20, 2021 at 10:00 a.m.</p> <p>§ (prevailing Central Time)</p> <p>§</p> <p>§ <b>Hearing Location:</b></p> <p>§ St. Louis Courtroom 5-North</p>
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**MOTION TO APPROVE COMPROMISE AND SETTLEMENT  
OF SEARS HOLDING CORPORATION AND ITS DEBTOR AFFILIATES’  
CLAIM AGAINST BRIGGS & STRATTON CORPORATION**

Briggs & Stratton Corporation (“**Briggs**”) and its debtor affiliates in the above-captioned chapter 11 cases, as debtors and debtors in possession (collectively, the “**Debtors**”), by and through their counsel, respectfully move this Court for an order approving the compromise and settlement of the claim Sears Holding Corporation and its debtor affiliates (collectively, “**Sears**”) assert against Briggs (as successor by merger to Briggs & Stratton Power Products Group, LLC).

**Background**

1. On July 20, 2020 (the “**Petition Date**”), the Debtors each commenced with this Court a voluntary case under title 11 of the United States Code (the “**Bankruptcy Code**”). The Debtors are authorized to continue to operate their business and manage their properties as debtors in possession pursuant to sections 1107(a) and 1108 of the Bankruptcy

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<sup>1</sup> The Debtors in these chapter 11 cases, along with the last four digits of each Debtor’s federal tax identification number are: Briggs & Stratton Corporation (2330), Billy Goat Industries, Inc. (4442), Allmand Bros., Inc. (4710), Briggs & Stratton International, Inc. (9957), and Briggs & Stratton Tech, LLC (2102). The address of the Debtors’ corporate headquarters is 12301 West Wirth Street, Wauwatosa, Wisconsin 53222.



Code.

2. On August 5, 2020, the United States Trustee appointed an official committee of unsecured creditors (the “**Creditors’ Committee**”) in these chapter 11 cases pursuant to section 1102 of the Bankruptcy Code. No trustee or examiner has been appointed in these chapter 11 cases. The Debtors’ chapter 11 cases are being jointly administered for procedural purposes only pursuant to Rule 1015(b) of the Federal Rules of Bankruptcy Procedure (the “**Bankruptcy Rules**”) and Rule 1015(b) of the Local Rules of Bankruptcy Procedure for the Eastern District of Missouri (the “**Local Rules**”).

3. On the Petition Date, the Debtors filed the Bidding Procedures Motion.<sup>2</sup> On August 19, 2020, the Court entered the Bidding Procedures Order<sup>3</sup> [Docket No. 505], an order that, among other things, approved bidding procedures in connection with the sale of the Debtors’ assets, scheduled an auction to take place on September 1, 2020 and scheduled a sale hearing for September 15, 2020. On September 15, 2020, the Court entered an order authorizing the Debtors to sell substantially all of their assets to Bucephalus Buyer, LLC (the “**Purchaser**”).<sup>4</sup> On September 21, 2020, the Debtors closed the Sale Transaction.<sup>5</sup>

4. The Debtors continue to honor their post-closing sale obligations, wind

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<sup>2</sup> *Motion of Debtors for Entry of an Order (I) Approving (A) Bidding Procedures, (B) Designation of Stalking Horse Bidder and Stalking Horse Bid Protections, (C) Scheduling Auction and Sale Hearing, (D) Form and Manner of Notice of Sale, Auction, and Sale Hearing, and (E) Assumption and Assignment Procedures; (II) Authorizing (A) Sale of Debtors’ Assets and Equity Interests Free and Clear of Liens Claims, Interests, and Encumbrances and (B) Assumption and Assignment of Executory Contracts and Unexpired Leases; and (III) Granting Related Relief* [Docket No. 53] (the “**Bidding Procedures Motion**”).

<sup>3</sup> *Order (I) Approving (A) Bidding Procedures, (B) Designation of Stalking Horse Bidder and Stalking Horse Bid Protections, (C) Scheduling Auction and Sale Hearing, (D) Form and Manner of Notice of Sale, Auction, and Sale Hearing, and (E) Assumption and Assignment Procedures and Form and Manner of Notice of Assumption and Assignment and (II) Granting Related Relief* [Docket No. 505] (the “**Bidding Procedures Order**”).

<sup>4</sup> *Order (I) Authorizing the Sale of the Assets and Equity Interests to the Purchaser Free and Clear of Liens, Claims, Interests, and Encumbrances; (II) Authorizing the Assumption and Assignment of Certain Executory Contracts and Unexpired Leases; and (III) Granting Related Relief* [Docket No. 898].

<sup>5</sup> *See Notice of (I) Filing of Amendment to Stock and Asset Purchase Agreement, And (II) the Occurrence of Closing of the Sale Transaction* [Docket No. 964].

down their estates, pursue confirmation of the Plan, and otherwise work on concluding these chapter 11 cases.

5. Additional information regarding the Debtors' business and capital structure and the circumstances leading to the commencement of these chapter 11 cases is set forth in the *Declaration of Jeffrey Ficks, Financial Advisor of Briggs & Stratton Corporation, in Support of the Debtors' Chapter 11 Petitions and First Day Relief* [Docket No. 51] (the "**Ficks Declaration**").

### **Jurisdiction**

6. The Court has jurisdiction to consider this matter pursuant to 28 U.S.C. §§ 157 and 1334. This is a core proceeding pursuant to 28 U.S.C. § 157(b). Venue is proper before the Court pursuant to 28 U.S.C. §§ 1408 and 1409.

### **Relief Requested**

7. Pursuant to Bankruptcy Rule 9019, the Debtors respectfully request entry of an order approving the Settlement Agreement attached hereto as **Exhibit A**.

8. Debtor Briggs is the successor by merger to Briggs & Stratton Power Products Group, LLC, the named Defendant in an adversary action in the United States Bankruptcy Court for the Southern District of New York: *Sears, Roebuck and Co. et al v. Briggs & Stratton Power Products Group, LLC* (Case No. 20-06059-rdd) (the "**Adversary Proceeding**"). Briggs & Stratton Power Products Group, LLC was merged with and into Debtor Briggs effective January 1, 2017.

9. The Adversary Proceeding arises from Sears' assertion that Sears made transfer(s) totaling \$3,816,055.77 to Debtor that are avoidable under sections 547 to 550 of the Bankruptcy Code.

10. As a result, Sears filed a general unsecured claim (the “**Claim**”) in these chapter 11 cases in the amount of \$3,816,055.77.

11. To avoid the cost and risk associated with litigating this matter, the Debtors and Sears have engaged in good faith, arms-length settlement negotiations regarding the Claim.

12. The Debtors and Sears (collectively, the “**Parties**”), without admitting any fault or wrongdoing, desire to settle and compromise the Claim pursuant to the following material terms and conditions (the “**Settlement**”), subject to approval by this Court:

a. The Claim shall be reduced from \$3,816,055.77 to an allowed general unsecured claim in the amount of \$200,000.00 (the “**Allowed Claim**”).

b. Effective upon the Court’s approval of this Settlement, the Parties will forever release, acquit and discharge each other and all of their officers, directors, employees, representatives, affiliates, agents and professionals, and all of their respective successors and assigns, from any and all liability for the transfers made Sears to the Debtors.

c. After the Court’s approval of this Settlement, counsel for Sears will file a notice of dismissal or stipulation of dismissal with prejudice in the Adversary Proceeding, and the Debtors will cooperate as may be necessary to effectuate the same.

13. Bankruptcy Rule 9019(a) provides that the Court may approve a compromise or settlement after notice and a hearing. In granting a motion pursuant to Bankruptcy Rule 9019(a), a court must find that the proposed settlement is fair and equitable and is in the best interests of the estate. *See Protective Comm. for Indep. Stockholders of TMT Trailer Ferry, Inc. v. Anderson*, 390 U.S. 414, 424 (1968); *In re Apex Oil Co.*, 92 B.R. 847, 867 (Bankr. E.D. Mo, 1988).

14. The settlement of time-consuming and burdensome litigation, especially in the bankruptcy context, is encouraged and “generally favored in bankruptcy.” *In re World Health Alts.*, 344 B.R. 291, 295-96 (Bankr. D. Del. 2006); *see also In re Penn Cent. Transp. Co.*, 596 F.2d 1102, 1112 (3d Cir. 1979).

15. The Debtors’ entry into the Settlement benefits their estates and creditors in a number of ways and fulfills the requirements for the approval of a compromise and settlement under Bankruptcy Rule 9019(a) and *Apex*.

16. The Settlement provides a mechanism for the Debtors and Sears to reduce administrative expense claims and other costs of litigating the Claim. Furthermore, the Settlement increases the amount of funds available for distribution to creditors and increases the percentage distribution each general unsecured creditor stands to receive given the reduction of Sears’ Claim. Finally, the fixing of the amount of the Claim component of the Settlement is in line with the Debtors’ goal of the claims administration process continuing as efficiently as possible. In short, the Debtors have determined in their business judgment that the transactions contemplated in the Settlement Agreement are fair and equitable and in the best interest of their estates and creditors.

WHEREFORE, the Debtors pray that the Court enter its order approving the settlement with Sears Holding Corporation and its debtor affiliates, authorize the Debtors to compromise and settle any and all claims and causes of action Sears has against the Debtors, and for such other and further relief as the Court deems just and proper.

Dated: December 22, 2020  
St. Louis, Missouri

Respectfully submitted,

CARMODY MACDONALD P.C.

/s/ Robert E. Eggmann

Robert E. Eggmann, #37374MO  
Christopher J. Lawhorn, #45713MO  
Thomas H. Riske, #61838MO  
120 S. Central Avenue, Suite 1800  
St. Louis, Missouri 63105  
Telephone: (314) 854-8600  
Facsimile: (314) 854-8660  
Email: ree@carmodymacdonald.com  
cjl@carmodymacdonald.com  
thr@carmodymacdonald.com

*Local Counsel to the Debtors and  
Debtors in Possession*

**Exhibit A**

**Settlement Agreement**

In re: Sears Holdings Corporation, *et. al.*  
Bankruptcy Case No. 18-23538 (RDD)

Adversary No. 20-06059

Kmart Holding Corporation and Sears, Roebuck and Co.,  
Plaintiffs,

v.

Briggs & Stratton Power Products Group, Inc., Defendant

### **SETTLEMENT AGREEMENT**

**THIS SETTLEMENT AGREEMENT** (this "Settlement Agreement") is made by and between: (1) Sears Holdings Corporation and its debtor affiliates, as debtors and debtors-in-possession ("Plaintiff" or "Debtors<sup>1</sup>"); and (2) Briggs & Stratton Corporation, successor by merger to Briggs & Stratton Power Products Group, LLC ("Defendant"). Hereinafter, Plaintiff and Defendant are referred to collectively as the "Parties".

**WHEREAS**, on October 15, 2018, Sears Holdings Corporation and its affiliated debtors (collectively, the "Debtors") filed voluntary petitions for relief under chapter 11, title 11 of the United States Code (the "Bankruptcy Code") in the United States Bankruptcy Court for the Southern District of New York (the "Court"), thereby commencing bankruptcy cases which are jointly administered under Case No. 18-23538 (RDD) (the "Cases");

**WHEREAS**, the Debtors are authorized to continue to operate their business and manage their properties as debtors in possession, and no trustee or examiner has been appointed in these chapter 11 cases;

**WHEREAS**, on October 24, 2018, the United States Trustee appointed the Official Committee of Unsecured Creditors (the "Creditors' Committee") [Bankr. D.I. No. 276];

**WHEREAS**, on April 25, 2019, the Court entered an *Order Authorizing and Approving Procedures for Settling De Minimis Affirmative Claims and Causes of Action of the Debtors* (ECF No. 3363) (the "Settlement Order") which provides, among other things, that the Debtors may settle a claim or cause of action where the settlement amount is equal to or less than \$5,000,000.00 without further Court approval, provided that the Debtors give written notice of such proposed settlement to: i) the U.S. Trustee, ii) counsel to the Creditors' Committee, and iii) counsel to

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<sup>1</sup> The Debtors in these chapter 11 cases, along with the last four digits of each Debtor's federal tax identification number, are as follows: Sears Holdings Corporation (0798); Kmart Holding Corporation (3116); Kmart Operations LLC (6546); Sears Operations LLC (4331); Sears, Roebuck and Co. (0680); ServiceLive Inc. (6774); SHC Licensed Business LLC (3718); A&E Factory Service, LLC (6695); A&E Home Delivery, LLC (0205); A&E Lawn & Garden, LLC (5028); A&E Signature Service, LLC (0204); FBA Holdings Inc. (6537); Innovel Solutions, Inc. (7180); Kmart Corporation (9500); MaxServ, Inc. (7626); Private Brands, Ltd. (4022); Sears Development Co. (6028); Sears Holdings Management Corporation (2148); Sears Home & Business Franchises, Inc. (6742); Sears Home Improvement Products, Inc. (8591); Sears Insurance Services, L.L.C. (7182); Sears Procurement Services, Inc. (2859); Sears Protection Company (1250); Sears Protection Company (PR) Inc. (4861); Sears Roebuck Acceptance Corp. (0535); Sears, Roebuck de Puerto Rico, Inc. (3626); SYW Relay LLC (1870); Wally Labs LLC (None); SHC Promotions LLC (9626); Big Beaver of Florida Development, LLC (None); California Builder Appliances, Inc. (6327); Florida Builder Appliances, Inc. (9133); KBL Holding Inc. (1295); KLC, Inc. (0839); Kmart of Michigan, Inc. (1696); Kmart of Washington LLC (8898); Kmart Stores of Illinois LLC (8897); Kmart Stores of Texas LLC (8915); MyGofer LLC (5531); Sears Brands Business Unit Corporation (4658); Sears Holdings Publishing Company, LLC. (5554); Sears Protection Company (Florida), L.L.C. (4239); SHC Desert Springs, LLC (None); SOE, Inc. (9616); StarWest, LLC (5379); STI Merchandising, Inc. (0188); Troy Coolidge No. 13, LLC (None); BlueLight.com, Inc. (7034); Sears Brands, L.L.C. (4664); Sears Buying Services, Inc. (6533); Kmart.com LLC (9022); Sears Brands Management Corporation (5365); and SRe Holding Corporation (4816). The location of the Debtors' corporate headquarters is 3333 Beverly Road, Hoffman Estates, Illinois 60179.



Wilmington Trust, National Association (the “Notice Parties”), and that the Notice Parties do not object to the same within the objection time period (the “Notice Parties’ Approval”). To the extent an objection is made by one or more of the Notice Parties, the Debtors may submit the proposed settlement to the Court upon appropriate notice and hearing;

**WHEREAS**, as provided under sections 547-550, 1106, and 1007 of the Bankruptcy Code, Plaintiff is authorized and has standing to prosecute, settle, dismiss, abandon, or otherwise dispose of avoidance actions under chapter 5 of the Bankruptcy Code;

**WHEREAS**, on October 15, 2019, the Court entered the *Order (I) Confirming Modified Second Amended Joint Chapter 11 Plan of Sears Holdings Corporation and its Affiliated Debtors and (II) Granting Related Relief* (ECF No. 5370), which provides, among other things, that certain causes of action, including claims and avoidance actions under Chapter 5 of the Bankruptcy Code, belonging to the Debtors and their estates as defined in the Debtors’ Plan of Reorganization are preserved;

**WHEREAS**, Plaintiff commenced an adversary proceeding before the Court in Adv. No. 20-06059 (the “Adversary Proceeding”) asserting that the Debtors made transfer(s) totaling \$3,816,055.77 (the “Transfers”) to Defendant that are avoidable under the provisions of Sections 547-550 of the Code;

**WHEREAS**, Defendant commenced its own chapter 11 case in the United States Bankruptcy Court for the Eastern District of Missouri on July 20, 2020, Case No. 20-43597-399 (the “Defendant’s Bankruptcy Case”). As a result, Plaintiff filed a general unsecured claim (Claim No. 8) in Defendant’s Bankruptcy Case in the amount of \$3,816,055.77 (the “Claim”).

**WHEREAS**, following good faith negotiations, Plaintiff and Defendant desire to settle and compromise this matter, on the terms set forth herein, to avoid the cost and uncertainty of further litigation; and

**WHEREAS**, Defendant has agreed to pay the Settlement Payment (as defined herein) to Plaintiff in full and final settlement of its alleged liability for the Transfers under Chapter 5 of the Bankruptcy Code.

**NOW THEREFORE**, the Parties agree as follows:

Settlement Effective Date. This Settlement Agreement shall become effective upon the execution of the Settlement Agreement by both Parties (the “Settlement Effective Date”). Plaintiff represents that Notice Parties’ Approval of the settlement set forth in this Settlement Agreement has been obtained pursuant to the Settlement Order.

1. Settlement Payment. In exchange for the release in Section 3 of this Settlement Agreement, the Parties hereby agree to a reduction in Plaintiff’s Claim from \$3,816,055.77 to an allowed general unsecured claim in the amount of \$200,000.00 (the “Allowed Claim”). The Defendant shall direct the Defendant’s claims agent, Kurtzman Carson Consultants, LLC (“KCC”), to update the official claims register to reflect this Settlement Agreement and Defendant shall provide any further documentation as may be requested by Plaintiff to effectuate the updating of Defendant’s official claims register and the filing of any claims settlement motion in Defendant’s Bankruptcy Case.
2. Notice Parties’ Approval; Bankruptcy Court Approval Not Required. Notice Parties’ Approval having been obtained pursuant to the Settlement Order, this Settlement Agreement is binding on the Parties and is not subject to further Court approval.
3. Mutual Releases. Both Parties acknowledge this Settlement Agreement is intended to fully resolve Defendant’s liability, if any, for the Transfers made by the Debtors to the Defendant,

and all of the causes of action set forth in the Complaint. On the Settlement Effective Date, Plaintiff and Defendant do forever release, acquit and discharge each other and all of their officers, directors, employees, representatives, affiliates, agents and professionals, and all of their respective successors and assigns, from any and all liability for the Transfers made by the Debtors to Defendant.

4. Dismissal of Adversary Proceeding. After the Settlement Effective Date, counsel for the Plaintiff shall file a notice of dismissal or stipulation of dismissal with prejudice in the Adversary Proceeding, and Defendant shall cooperate as may be necessary to effectuate the same.
5. Defendant's Claims Against Debtors' Estate. Other than as expressly set forth in section 2 hereof and as otherwise provided in the proviso to this section 5, nothing in this Settlement Agreement shall be deemed to (a) amend, modify or otherwise affect Defendant's unsecured or non-priority or non-administrative claim(s) and/or any unsecured or non-priority or non-administrative proof of claim(s) against the Debtors or their estates, if any, or (b) grant, deny, modify, withdraw, or otherwise affect any pending objection to an existing claim in the Cases; *provided* that, notwithstanding the foregoing, Defendant hereby waives any right it may have under section 502(h) of the Bankruptcy Code to file a proof of claim (or to increase the amount set forth in an existing proof of claim) based on the Settlement Consideration.
6. No Admission of Liability. Each of the Parties acknowledge this Settlement Agreement is a compromise of a disputed claim and that the Settlement Payment made hereunder shall not be construed as an admission of any liability by either Party.
7. Entire Agreement. This Settlement Agreement constitutes the complete understanding between the Parties and it cannot be altered, amended, or modified in any respect, except by a writing duly executed by both Parties.
8. Voluntary Act. Defendant hereby warrants that it is authorized and empowered to execute and perform this Settlement Agreement. Plaintiff hereby warrants that it is authorized and empowered to execute and perform this Settlement Agreement. The Parties acknowledge that they have read this Settlement Agreement in its entirety, fully understand its terms, and voluntarily accept the terms set forth herein. Further, each Party acknowledges that it has had an opportunity to consult with legal counsel and any other advisers of its choice with respect to the terms of this Settlement Agreement and it is signing this Settlement Agreement of its own free will.
9. Attorney Fees. Each Party shall bear its own attorneys' fees and costs relating to the Transfers, settlement negotiations, and the negotiation and execution of this Settlement Agreement. However, if either Party must commence an action to enforce the terms of this Settlement Agreement, the prevailing party shall be entitled to an award, in addition to any other claims or damages, of its costs and expenses including attorneys' fees, in connection with said enforcement action.
10. No Assignment. Each Party hereby represents and warrants to the other Party that it has made no assignment, and hereafter will make no assignment of any claim, cause in action, right of action, or any other right released pursuant to this Settlement Agreement.



11. Execution in Counterparts. It is understood and agreed that this Settlement Agreement may be executed in identical counterparts and may be transmitted by email or facsimile, each of which shall be deemed an original for all purposes.

IN WITNESS WHEREOF, the Parties have caused this Settlement Agreement to be executed as of Dec. 8 2020.

For Plaintiff:

**ASK LLP**

By: \_\_\_\_\_

Joseph L. Steinfeld, Jr., Esq.

Gary D. Underdahl, Esq.

*Counsel for Sears Holdings Corporation, et. al.,  
Debtors and Debtors in Possession*

For Defendant:

**Briggs & Stratton Corporation (successor by merger to Briggs & Stratton Power Products Group, LLC)**

By: \_\_\_\_\_

Print Name: \_\_\_\_\_

Title: \_\_\_\_\_

